acts of singular merit. To some of these men and deeds we had proposed to refer, but the limits we have already exceeded forbid. We esteemed it one of the special advantages of the recent improvements in the system, that meritorious officers already in the service might be led in consequence of them to continue in a career which, under the watchful supervision of the Department and intelligent legislation of Congress, seemed likely at last to deserve in some degree that name. It is to be hoped that the spasmodic and short-sighted action of the House of Representatives within the last few weeks may not operate as a discouragement.

CHARLES HALE.

ART. IV.— CHIEF JUSTICE CHASE.

IN speaking briefly of the life and character of Chief Justice Chase, no attempt will be made here to go much beyond those decided characteristics of the man that seem to mark him as one of the most distinguished of the present century, which has been by no means deficient in the number or qualities of its eminently great and good men. Omitting all discussion, except incidentally, of Mr. Chase's education, both preparatory and professional, and also of his services at the bar, and as Governor of Ohio, and Secretary of the Treasury, we shall limit ourselves mainly to two leading points, — his conservatism as a statesman, and his eminent qualities as a judge.

I. The world recognizes Mr. Chase as one of the most, if not the most, earnest and devoted among American advocates of antislavery principles. But he is even more distinguished, perhaps, for the quality and character of his opposition to slavery than for its earnestness and sincerity. While most reforms of this character, and this in particular, have been largely based upon the theory of schism and separation from the established order of things, both in the organic law of the government and especially in its administrative functions, there is nothing of this character, in any very marked degree certainly, in any thing said or done by Mr. Chase in opposition to slavery.

He seemed to comprehend and to feel from the very outset of his long-continued and determined warfare against slavery, in all its manifestations and pretensions, that it existed as one of the recognized institutions of the country; that it really formed one of the essential compromises upon which the national Constitution was founded and without which it could not, probably, have been obtained; and that it must therefore be encountered by prudent administration and wise reform, instead of denunciation and revolution. Hence we find him, at all times, working diligently and patiently to effect all possible limitations and restrictions upon the institution, on the ground that freedom was national and slavery sectional; that by the long-established and clearly recognized principles of the common law of England, which this country had inherited or adopted in full measure, freedom possessed a charter everywhere within the dominion of the principles of magna charta, and slavery nowhere beyond the limits of its express recognition in the laws of the land.

Hence we have never heard from Mr. Chase, even in his most eloquent and excited harangues, in the courts or in the national Senate, or anywhere else where he was called repeatedly to enforce his antagonism against slavery, any of that violent or profane denunciation against the national Constitution, which, for a time, formed a not insignificant proportion of anti-slavery literature. It is not important now to inquire wherein consisted this firm and persistent conservatism of Mr. Chase's warfare upon slavery, or how it originated. If it had been a mere stroke of far-seeing and wisely planned policy, it would have been entirely justifiable, and eminently worthy of its author. For no one so wise and so discriminating as Mr. Chase could fail to comprehend that a nation, as stable and prosperous as ours, which had suffered so many hair-breadth escapes as we did in securing so unrivalled a constitution, would feel extreme reluctance, to say the least, in putting the whole in peril in order to initiate a reform so uncertain in its promise of favorable issue, however desirable they might regard it. He naturally felt, therefore, from the first, as a wise master-builder, that if slavery were ever to be expelled from our institutions, it must be done by the healthy and normal action of the vital

forces within the Constitution itself. Some speculations upon the question of Mr. Chase's conservatism, more curious than wise, have attempted to deduce it in large measure from his religious training in the principles of the book of Common Prayer. No doubt the habit through life of asking divine aid, almost daily, in obtaining deliverance "from all heresy and schism," might be expected to have some effect in keeping one from separation and rebellion both in church and state. But Mr. Chase was not at all more conservative in regard to his antislavery action, or anything else, than was Mr. Lincoln, and probably no one will attribute any portion of the latter's conservatism to his religious training. We must therefore conclude that it was an instinct of self-preservation as to the government, and a far-seeing policy as to reform, in both these eminent men and in all our other most reliable statesmen, that while they have been awake to the necessity of reforms in the government, and especially in regard to the limitation and final extinction of slavery, both for our credit and our progress as a nation, they have all, with rare exceptions, felt the imperious necessity of keeping within the prescribed limits of our organic law.

Revolutionary radicalism is sometimes, no doubt, demanded, in large proportions, to initiate great national reforms, but something more conservative and prudent is commonly required to bring them to a successful issue, without serious detriment to other vital interests. But those who guide the storm and direct the whirlwind of human passion, however indispensable in all successful reforms, are not always the ones to whom the actors in the agitating scenes of the drama, at first, certainly, accord the highest measure of commendation; when the din of battle has passed away, the wise and the prudent will not fail of their due reward. The impartial historian will be compelled to award the largest measure of praise and glory to Mr. Chase, on the whole, as probably the wisest and most earnest of all the workers against slavery in our country.

He seemed to feel very early in his career, that antislavery, in order to be successful, must have the support of a party which did not profess any antagonism with the acknowledged principles of the written Constitution of the government. And

although elected to the United States Senate by the co-operation of the Democratic party, with which he continued to act until he found it committed to the deliberate purpose of repealing the Missouri Compromise, and thus extending slavery or a contest for its establishment in all the Territories where either slave labor or the raising of slaves could be profitably pursued, he finally felt compelled to abandon that party and to constitute the Free-Soil party for the purpose of restricting slavery to the States where it was then tolerated. And notwithstanding his anomalous attitude in the Senate as to party affinities at this time, his position was nevertheless influential and commanding; and he aided, more than any other one man, perhaps, in the formation of the Free-Soil party. We are not disposed to underrate the efforts of that large class of workers and agitators in the same cause, who fell back upon the divine rights of humanity for their basis of action; which, however specious in theory or sometimes effective in rhetoric, has even less practical support in the true theory of civil government, than the much-abused maxim of the divine right of kings and of all governmental authority, which, indeed, receives but small countenance in modern theories of government. Admitting, in the abstract, the full force of all this unorganized and rebellious spirit against wrong and injustice, it is none the less evident to all reflecting persons that no such theory of reform can ever receive much countenance from the truly loyal, whose minds are so far instructed in the principles of government as fully to comprehend that in all their labors of this character they are but giving countenance and support to rebellion and revolution. Mr. Chase, both from education and principle, understood and felt all this, and comprehended fully that the masses of the American people were too conscientious in their religious feelings and too intelligent and well instructed in their allegiance to the Constitution, to initiate a revolution, even for the accomplishment of an end so desirable as the destruction of slavery; knowing, as he did, that the destruction of one of the recognized institutions of the country, by force and violence, could not probably be effected without the speedy destruction also of all government. No man comprehended this fundamental axiom in civil government more thoroughly or felt its force and

truth more profoundly, we believe, than Mr. Chase. To the end, therefore, of establishing a theory, and founding an organization for the limitation and restriction and ultimate peaceful and legal extinction of slavery, he labored, so to speak, night and day, in season and out of season, with precious little aid, he must sometimes have felt, from those radical antislavery workers, not unjustly called the destructives of the party, who claimed to be enlisted, indeed, in the same crusade, but upon the muster-roll of Omnipotence Himself, and who would not therefore stoop to ordinary human agencies in the accomplishment of their purposes. There is always, in all countries, a numerous class of good men, who seem to suppose that the divine mind cannot but look with special favor upon those who defy all human law in the service of what they are pleased to dignify with the high-sounding epithets of "conscience" and "divine law," written, as they tell us, by the finger of Omnipotence upon the human heart; not always remembering that much of this depends upon the reader more than upon the writer. Some men, in all ages and countries, will insist upon reading "self-will" as if it were written "conscience."

But Mr. Chase suffered under no such hallucination or delusion. From the first he resolved to do his best, within the law, to crush the fatal curse of slavery which he knew was to some extent imbedded in the national Constitution. And he was wise enough to see his opportunity in the inauguration of the Free-Soil party in the national form it assumed in 1848, when it presented, as its candidate for President, one of the oldest, most highly honored, and respected of the old national Democratic party, who had already sustained the office of President for one term with the highest credit both to himself and the country, and who had been defeated in his re-election, as his friends believed, by the efforts of the slaveholders. When the constitutional opposition to slavery, of which Mr. Chase was at the time the acknowledged champion and leader, had accomplished all this, it required no prophetic inspiration to comprehend that its days were numbered and its final extinction could not be very remote. And if the spirit of Mr. Chase's constitutional opposition to slavery had been honestly and faithfully followed, there seems to us no great reason to

question that slavery might have been abolished with less injustice, with infinitely less cost and suffering, and in little more time than has already elapsed in getting rid of it, without, in fact, in any very perfect manner ridding the nation of its evil consequences.

As evidence of Mr. Chase's conservative determination to demand nothing which he did not regard as strictly legal and constitutional, we may here refer to the theory for restricting slavery, which he maintained with so much zeal and eloquence in his speeches in the Senate and in his official communications as Governor of Ohio. In the Senate he urged the abolishing of slavery and by consequence the slave-trade in the District of Columbia by act of Congress, which was most unquestionably within the constitutional power of Congress, but which so advanced an antislavery advocate as the venerable John Quincy Adams long hesitated to urge, and which was, nevertheless, most unquestionably demanded by the justice, as well as the self-respect, of the national government. He also advocated declaring the inter-state slave-trade illegal by act of Congress, which no man now questions the power of that body to do, or to have done, at any time since the adoption of the national Constitution, and which would have done more, at one blow, to limit the institution within its then present boundaries, and finally to secure its extinction, without convulsion, than any measure ever proposed; but few except the slave-owners seemed then fully to comprehend either its justice or its power. He also urged upon Congress the enactment of laws excluding slavery from the Territories, the right to do which is now regarded as most unquestionable. And he sometimes urged, in the heat of debate, the repeal of all laws for the surrender of fugitives from labor, as not being justified by the provisions of the national Constitution, thus leaving that constitutional provision to be executed by those to whom the service of the fugitives was due. This opinion, although defended by the most plausible arguments, and held by some good lawyers, seems more the result of honest zeal in a good cause than of sound legal principles. But it possessed nothing of the revolutionary character, and one of his chief arguments against the earlier laws for surrendering fugitives from labor, that they attempted to

control the action of State officials in effecting a strictly national function, has since been declared well founded by the national court of last resort.

There was, too, one other still more desperate resort than all others against slavery, which has since become very popular in some quarters, — the attempt to incite servile insurrections by means of military incursions set on foot in the free States against the slave States, to which, of course, no man of such comprehension and appreciation of the just obligations of civil allegiance as Mr. Chase could give the slightest countenance. His recorded opinion, as Governor of Ohio, when addressed upon the subject by Governor Wise of Virginia, in the autumn of 1859, just after the invasion of the latter State at Harper's Ferry, is worthy of repetition. "Whenever it shall be made to appear, either by evidence transmitted by you or otherwise, that unlawful combinations by any persons or at any place in Ohio have been formed for the invasion of Virginia, or for commission of crimes against her people, it will undoubtedly become the duty of the executive to use whatever power he may possess to break up such combinations and defeat their unlawful purposes; and that duty, it need not be doubted, will be promptly performed."

And when accused by Senator Butler, of South Carolina, of having drawn up and advocated a resolution in the anti-slavery convention of Ohio recommending those called to subscribe or take an oath to support the Constitution of the United States, to do it with the mental reservation that the provision for surrendering fugitives from labor was so absolutely void as to form no part of it, a view which he had in fact most strenuously opposed when offered by others, he declared in the Senate, "I never proposed the resolution; I never would propose or vote for such a resolution." By thus showing Mr. Chase's adherence to conservative principle in all his opposition to slavery, we may, possibly, not add very essentially to his present popularity, but we nevertheless deem it important to a just estimate of his true character, and important as tending very essentially to the more perfect comprehension of some other of his public acts not well understood by all. And we have no apprehension that his fame, in the long run, will suffer any

abatement from the truth in this respect being fully and distinctly understood by all.

II. Mr. Chase's last great public office was that of Chief Justice of the National Supreme Court, as the immediate successor of two such incumbents as Marshall and Taney, both of whom deservedly rank among the greatest and best of all our eminent public men. Mr. Chase was appointed Chief Justice by Mr. Lincoln, with the approbation of the Senate, on the 6th of December, 1864, and received the oath of office and took his seat upon the bench on the 13th of that month. We do not suppose that Chief Justice Chase's opinions, during the nearly nine years that he held the office, although confessedly very able, will do complete justice to the high character of his weight and influence in the tribunal. His mind had been devoted to, and absorbed almost exclusively by other studies than those here demanded of him, for a very long period considering that it came out of the ripest portion of his mature life. He was now more than fifty-six years of age, and it was too late for ordinary men to make great proficiency in studies so long disused. But Mr. Chase's energy and devotion to duty enabled him sensibly to advance year by year in the attainment of that almost unparalleled excellence of judicial character and attainment ascribed by common consent to his great predecessors, till he was finally recognized by all the more eminent of the American bar as scarcely below the highest measure of greatness attained by any who had before graced the place he held.

For real greatness of soul and true nobleness of character he was indeed second to none, and for high and difficult attainments in the learning of the profession he had few if any superiors. His views were clear and far reaching, without becoming either hair-splitting in refinement or cloudy and obscure from the infinity of the range of their speculations. He always seemed to comprehend the true principles involved, in every case which came before him, even where he was not at first blush entirely familiar with all the learning upon the subject, but this he always mastered with astonishing celerity and accuracy. And his dignity and courtesy in presiding; his patience in listening to argument, sometimes to the dullest and

most useless speculations of counsel which it would be an absurd anomaly to dignify by calling argument, and which manifests itself before this great national tribunal in larger measure and more offensive forms than in the State courts; his firmness in following his convictions, without forgetting, even for a moment, the respect due to the opinions of those who might fail to see the subject in the same light which he did, and his unwavering courage and determination to allow no obstacle to come between the court and the justice of the case, however humble or unpopular the cause or the parties, have left him an imperishable name among the noblest and the best American judges, the long list of whom will not, we believe, suffer in comparison with those of any age or country, either for learning or character. Chief Justice Chase's summary of the judicial qualities of one of the most valuable of the members of the court, Mr. Justice Catron, presents the outline of the highest judicial character, and, in many respects, is but a reflection of his own qualities as a judge. After dwelling briefly upon other excellences of his departed associate, he adds: "He was even more distinguished by strong practical good sense, by firmness of will, and straightforward honesty of purpose. Ever frank and earnest in the expression of his opinions, he was yet void of desire to impose them arbitrarily upon others. The candor and patience with which he listened to argument found fitting counterpart in the impartiality and equity of his judgments. While the records of this court endure they will recall the memory of the just and fearless magistrate who pronounced them." It is no doubt true that this must have been a somewhat studied eulogium of his departed brother, but if anything demands study and deliberation, it is what we say of the dead, that we may "nothing extenuate, nor set down aught in malice." But we must all feel and confess, that the man who entered upon his great office, with such a sublime estimate and comprehension of the eminent qualities of mind and heart demanded for the full discharge of its difficult duties, could not fail to reach a very high place among great judges. Such a comprehension of the high and difficult duties of his place seems even more indispensable, if possible, than the very highest attainments of professional learning, though this

is more demanded in the office of a judge than in almost any other.

III. But we must briefly allude to two cases, where Chief Justice Chase has been sometimes criticised in no friendly spirit, — his agency in the first decision upon the legal tender question, and the part he took in the impeachment trial of President Johnson: 1. His judicial opinion in regard to the constitutionality of the issue of paper money and declaring it legal tender for all private debts, past and future, by act of Congress, would probably never have been questioned, certainly not in any spirit of rancor and bitterness, had it not been for the part he took, as Secretary of the Treasury, in the creation of this same paper and having it declared legal tender. The gravamen of the charge, therefore, brought against the Chief Justice is, that he could not have been sincere in both cases; and as he is known to have been intensely serious and in earnest in all his war measures, the inference of some heated partisans has been that his opinion in Hepburn *v.* Griswold (8 Wallace, 603) must have been the result of some transition state in regard to party affinities. This criticism of Mr. Chase seems to possess two very unfortunate, not to say discreditable elements,— discreditable, at least, to those who use it. First, it seems to imply that all opinions of public men, even of judges, must and will, if sincere, conform to the principles of the political party with which they act, at the time of their appointment. Secondly, there seems to be some kind of belief or claim sheltered under this particular form of the charge against the Chief Justice, that he was under a kind of imperfect moral or honorary duty towards the party which called him to the place, either never to change his legal views and opinions upon any subject of party policy, or, if he did, still to disguise his real convictions out of deference to those who gave him his place, in order that he might still continue to serve them "with a perfect mind and willing heart." One might have supposed any such claim impossible, if we did not know from observation how terrible to weak and cowardly minds is the effect of party terror. There have been thousands in our country, no doubt, and are still many more, who sincerely believe that the obligations to serve the party whose

interests they espouse are superior to all other obligations, human or divine. There is some ground for hope that this vicious excess of party discipline is beginning to give place to better counsels, in some quarters at least, but it has thus far unquestionably in all parties been the cause of much evil and of more folly. The pretence that any one is not at liberty to change a legal opinion upon any subject while acting as judge sworn to do equal right and justice to all men, argues a depth of absurd ignorance or depravity, only to be found, one might fairly hope, among the blindest and the weakest of party following. Any one who had ever had much experience in judicial administration would never fail to feel the gross absurdity of all such pretensions. The writer of this article, although never, so far as he knows, suspected of any unreasonable distrust of his own opinions, whether those of first impression or not, feels compelled, in obedience to a proper respect for the truth, to declare that he has not seldom changed his opinion of the true principles of law governing a case more than once during the argument, and without question such has been the experience of all judges who have felt the same anxiety to reach the truth, as Chief Justice Chase always did. The saddest defect of capacity, either in a judge or any other person, is to become so satisfied with the speculations and conclusions of his own mind that he is no longer capable of listening to argument with a ready and teachable disposition to reach the truth without regard to his present convictions, except as they form part of the basis by which he hopes ultimately to reach the absolute or comparative certainty of what truth is. The just reply to all such cavils against any change of opinion will be found in the homely proverb, that "Wise men often change their opinions, but fools never."

It is known to all that Mr. Chase, as Secretary of the Treasury, adopted the opinion of making anything but coin legal tender, with extreme reluctance and distrust, and merely upon the ground of the exceptional necessities of the pressing exigencies of the war and with the determination to return to specie payment at the earliest practicable moment. The extended argument upon the question before the court by the ablest members of the American bar, and the very unsatisfac-

tory ground upon which the foremost dissenting member of the court placed the argument in favor of the issue of legal-tender paper, might naturally have confirmed the Chief Justice in his early conviction, that the Constitution gave Congress no power to make anything but gold and silver coin a lawful tender in payment of private debts. His own argument in this case, and his dissenting opinion, when it was overruled in the Legal Tender cases (12 Wallace, 457, 570), is perhaps as satisfactory as any which has thus far been made upon the basis of finding the warrant for any such law in the express provisions of the Constitution.

The dissent of Mr. Justice Miller in the case of Hepburn *v.* Griswold places the argument in favor of the constitutionality of the legal-tender act, upon the ground, that it was a "proper and important, and at the time almost an indispensable measure for carrying into execution some of the powers vested by the Constitution in the government of the United States." The learned judge is unable to specify any one particular power of the national government to which this resort became an indispensable accessory, which seems an unfortunate infirmity in the argument; for despotism and irresponsible power are wont to lurk under such convenient generalities, and we involuntarily suspect the soundness of any theory which is not able to define, specifically, the grounds upon which its advocates are content to rest it. The learned judge, in his dissent, selects the War Power and the Borrowing Power, as the most plausible powers of the national government upon which to graft this, as an incident. This must appear to every experienced lawyer, as it no doubt did to the Chief Justice, a most unfortunate selection, at least in one very important particular. Neither of these powers is of the same class, or kind, with that of lawful tender; in legal phrase it is not *ejusdem generis*. This must be classed, and could only, naturally, be sought under the power to coin money and to provide a circulation for the country, and would naturally be expected to appear there, if anywhere, whether it were called a distinct power, or one accessory to others.

In looking at the specific provisions of the Constitution under this head, there would seem to be no question that the

money function or power of the government was regarded, in its entirety, as a national function or power, and as such, was intended to be transferred, in all its parts and incidents, to the national government. Many of the functions of the national government were enjoyed in common with the States, such as making laws, erecting courts of justice, levying taxes, etc. Others, exclusively of a national character, were evidently intended to be transferred *in solido* to the national government. The money power and the commercial power were very clearly of this character, and with equal certainty, it appears, they were intended to be transferred entire to the government then being created, for the exercise of the exclusive national sovereignty, which powers before had resided largely in the separate States, either in whole, or concurrently with the former national authority. This is very apparent from the express provisions of the Constitution. In enumerating the powers of Congress the words used are, "To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures. . . . . To provide for the punishment of counterfeiting the securities and current coin of the United States." The word "money" is again used in the provision for raising and supporting armies, in limiting the "appropriation of money to that use" to the term of two years. Again it is provided that "no money shall be drawn from the treasury," etc. And the States are expressly prohibited "to coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts." From all which we must infer, that the making and the regulating the circulation and the value of money, and of everything supplying the place of money, must have been intended to be thenceforth exclusively under the control of the national government. The States had before, as is well known, emitted bills of credit and made them lawful tender for debts. (Craig *v.* Missouri, 4 Pet., U. S. 410.) All this is now prohibited to the States, and unless we can suppose it was intended altogether to prohibit the circulation and tender of such securities in future, we must suppose that power was intended to be exercised thereafter exclusively by the national government. If not, it is difficult to conjecture why it should have

been expressly denied to the States and not to the nation. The granting titles of nobility is expressly denied, both to the States and the nation, because it was not intended to exist under the new form of government, in any form, or anywhere. Why, then, if it were intended to deny the power, both in the nation and the States, of issuing bills of credit and making them legal tender for private debts, should it have been expressly denied to the States and not to the national government? There can be no fair answer, as it seems to us, to this inquiry, except to recognize its continued existence in the national government. The fact, too, that provision is made, in the words of the Constitution, for punishing the counterfeiting the "*securities and current coin of the United States*," shows very clearly, that the existence and necessity of protecting the genuineness of such securities, as part of the currency of the nation, was distinctly in the mind of the framers of the Constitution, at the time it was presented for adoption. This provision for the punishment of counterfeiting the "*securities*" and "*current coin*" of the United States shows, very clearly, also, that it was intended for the protection of the *currency*, else the subject might have been left to the protection of the general law against the forgery of contracts. The word "counterfeiting," too, has a special application, by common usage and consent, to the currency of the country, although applicable also, in a less strict sense, to other forgeries. The use of the word "money," too, as embracing all appropriations from and the payment of all sums out of the treasury, would favor the same construction that "money" was intended to embrace, not only gold and silver coin, but all securities of the government used as circulation, or in payment of public appropriations from the treasury, for which, from some source, there has always, from before the date of the Constitution, been found a necessity. There were four banks of issue, in as many different States, existing at that date, and they have been constantly increasing in the States, until the national government finally deemed it the true policy to tax them out of existence, during the war, and to substitute legal-tender notes and the bills of the national banks in their place. This measure, which was declared legal by a majority

of the National Supreme Court, in Veazie Bank *v.* Fenno, 8 Wallace, 533, is certainly not defensible upon any other grounds than that it is the duty of the national government to supply all kinds of circulation demanded by the exigencies of trade and commerce in the country, or of the government, as is justly maintained in the dissenting opinion of Mr. Justice Nelson, concurred in by Mr. Justice Davis. Some of our most eminent constitutional jurists, including Mr. Justice Story, who dissented from the opinion of the court in Briscoe *v.* The Bank of Kentucky, 11 Peters, U. S. 257, upon this ground, have maintained this view from the first adoption of the Constitution, namely, that the issue, by State banks, of bills for circulation, was not defensible under it. And this view may now be regarded as practically established. Indeed, we may fairly say, legally established, since the decision in Veazie Bank *v.* Fenno is placed by the Chief Justice upon that among other grounds, and it is the only one whereby the case can be made to stand with other decisions of the same court. We cannot imagine any ground upon which the creation of national banks of issue by Congress can be vindicated, except that under the United States Constitution it becomes the national duty to supply such a kind and amount of paper circulation as is demanded by the exigencies of the government and of trade and commerce throughout the country. Upon this ground only, therefore, that the Constitution was intended to transfer the making and regulating of the entire circulation of the country to the national government, and to deny any interference with it on the part of the States, is it possible, in our judgment, to find a legal basis whereon to rest the legal-tender provision in the issue of bills of credit during the war. That has always been done by the independent and sovereign European states. (Emperor of Austria *v.* Kossuth, 7 Jur. N. S. 483, id. 639.) And the British Parliament have made bills of the Bank of England legal tender at an early day for some purposes, and ultimately indeed for most purposes. And the same was the constant and well-recognized practice of the different American States, as to bills of credit, before the adoption of the United States Constitution. (Craig *v.* The State of Missouri, 4 Peters, U. S. 410.) If then we reach the conclusion,

that it was intended to transfer to the national government the well known and long-recognized function of national sovereignty, to coin money and emit bills of credit, and to declare them part of the circulation of the country, for purposes of trade and commerce, and thus make them lawful tender in payment of private debts, and to deny this entire function of sovereignty to the States, we shall find no difficulty in upholding the legal-tender acts, as proper, in a special emergency, notwithstanding we may suppose it was also the purpose of the Constitution to provide, either a currency in gold and silver, for ordinary times, or for all times, one redeemable in that medium. But the attempt to deduce such a power from some independent source in the Constitution, if it is not fairly implied in the definitions applicable to the money power, seems to us scarcely less than absurd. It is certainly in conflict with all the known canons of statutory and constitutional construction. For if it is not granted, either in terms or by fair implication, in that provision of which it is kindred, then it is there denied; and if denied there, it would seem a most unnatural and absurd conclusion to attempt to extract it by some refined process of construction, by reason of the pressure of an unprecedented war, out of an entirely foreign provision in the Constitution. We have been compelled to concede almost superhuman power to the war in turning and overturning principles of construction in the Constitution, but we have never found any reason for adopting this strange conclusion involved in the opinion by which the legal-tender clause was finally upheld, and we are satisfied from his opinion that the Chief Justice felt himself driven to the same conclusion, and we entertain no doubt that all good lawyers held the same views upon this question before the war. Nothing short of a degree of fever heat upon all questions connected with the war has ever been able, as far as we know, to drive any good lawyer to the conclusion now held on the subject of the legal-tender clause. And we feel assured, that the longer the question is discussed, and the more clearly it is understood in all its bearings, the more it will redound to the credit of Chief Justice Chase that he felt an utter inability to adopt the only view propounded by the advocates of the validity of the legal-tender

acts. That he might not, upon the views we have here briefly presented, or upon some other, have come to a conclusion more favorable to the validity of the acts, we do not know. It is enough to satisfy us that he acted wisely in rejecting the only view presented, that it is one which no lawyer, in our judgment, has ever been able to render entirely plausible in a legal point of view even to himself, except upon the mere ground of the exigencies of the war, which, with due deference, seems to us no argument at all. It is but dire necessity which knows no law. It is a forced and unlawyerlike construction, and we believe it will some time give place to one more rational, and equally favorable to the maintenance of this indispensable function of national sovereignty, to make money either of metals or paper.

2. It remains only to speak in a very brief way of Chief Justice Chase's connection with the Impeachment Trial of President Johnson. The trial itself was of a character which had never before occurred under the Constitution. Not, indeed, because it was mainly of a political character, and instigated largely, if not exclusively, by partisan rancor; for most of the American state trials, and, for that matter, the state trials in all countries, naturally rest, in a great measure, upon that basis. But it was an attempt to remove from office, and render forever infamous, the chief executive magistrate of the nation, upon charges of high crimes and misdemeanors, resting altogether, as far as we could ever see, upon the fact that the accused, being always, before the war, a member of the Democratic party, had come into the Republican party upon the issues involved in that controversy, and thus been elected Vice-President of the nation, and in consequence of the lamented death, by assassination, of President Lincoln, had succeeded to the office of President; and in the discharge of the duties of that office had fallen back upon some of the theoretical views and opinions in which he was educated and had hitherto acted. It may be fair, also, to remember, that after Mr. Johnson had been hotly pushed, and rudely rebuked, for not conforming more closely to the views and feelings of his new associates, he very probably had manifested some degree of stubbornness, and violence of temper and over-ardent zeal possibly,

and thus provoked numerous conflicts and some personal quarrels with his subordinates. The attempt to impeach him for malfeasance in office, however, in any view, rested mainly upon no better ground than that he was in the way, and an obstruction to the speedy accomplishment of most of the party policies of the hour. It being known, also, that if he could be put out of place, his successor would prove a most subservient and devoted champion of the party, it became, in the view of the party leaders, a most desirable object to effect the change. There was, however, no regular and legal mode of effecting this, and most of those who afterwards entered into the prosecution with such apparent sincerity of purpose would, if left to their own impulses, no doubt have been content to wait the expiration of Mr. Johnson's term of office. But some few of the more resolute and determined, and not very scrupulous, perhaps, as is common in like emergencies in all parties, devised the plan of the impeachment. This possessed an imposing sound, and carried the more simple and subservient of the party with a rush amounting almost to frenzy and infatuation, as if it were one of the most righteous and praiseworthy indictments ever drawn up, against the most desperate and heartless villain; almost without a parallel in the history of crime. Many attempted to give the trial a kind of factitious glory and grandeur, by comparing it with Bradshaw's Regicide Court, and the condemnation of Charles I. of England.

It would seem that the leaders had resolved, from the very outset, to make the trial as strictly political and partisan as possible, in order to preclude any faltering in the conduct of the senatorial majority, which would thus be ample to secure a conviction in any emergency, about four fifths being of the dominant party. They determined, therefore, that the tribunal should not even be called "a court," but a Senate, or Council of State, convened to record the demands or decrees of the party, in obedience to the dictates of a party caucus, either openly or covertly convened. These men knew the temper and high tone as well as the talent of the Chief Justice, and they naturally dreaded the power of his influence in defeating their bad schemes. They therefore resolved at once to move upon this citadel of justice, which had now become their most dreaded

enemy, with their boldest and best-disciplined troops, and thus by a desperate charge break, if possible, the outer lines of his defences and ultimately compel him to surrender, willingly if possible, but forcibly if necessary, to their imperious demands. The managers upon the part of the House, accordingly, through a committee of the Senate, informed the Chief Justice, in advance of his taking his seat as President of the Court of Impeachment, that they would not recognize him in any other capacity than that of a simple moderator, to keep order and put questions, with no voice whatever in the proceedings, either to speak or to vote upon an equal division. This the Chief Justice, in a forcible and temperate reply, met squarely in the face, denying in the clearest and most unanswerable manner every requirement and demand of this arbitrary and desperate attempt on the part of the managers of the party to overawe the court and to exclude its appointed head, in the very words of the Constitution, from all just participation in the trial.

After the Chief Justice took his seat, however, as the head of the tribunal, it very early and very clearly became apparent that he was adequate to the emergency in giving the proper direction to the movements of the court. Even the most eloquent and daring of the managers seemed awed into decorum and silence by the presence, dignity, and impartiality of Mr. Chase throughout the trial, and never made any further attempt to enforce their demands, except by occasional appeals to the body of the court from the rulings of the Chief Justice, and in these they were signally defeated, the court even modifying their rules of order, prepared in advance in order to exclude the proper voice of the Chief Justice, thereby allowing him, by a clear majority of their number, to rule all points of order and of law, in the first instance, subject to appeal to the court if any senator desired it, and to give the casting vote upon any equal division of the court. It is too near the time of the trial and too many worthy and high-minded men were rashly driven or drawn into the effort to convict Mr. Johnson without evidence, to render it desirable to revive the incidents of the trial in detail. But, as before stated, thus it occurred, through the almost sublime determination and unequalled

talent and energy of the Chief Justice, as it always appeared to us, that what was designed as a mere formality in the sacrifice of Mr. Johnson upon the altar of mad party zeal became a dignified and decorous tribunal for his trial and acquittal.

This trial in fact began and ended almost in the very identical footprints of all our important state trials. The trial of Judges Samuel Chase of the National Supreme Court, and Peck of the District Court of Missouri, began in party rancor and ended in an acquittal by reason of some few of the more judicial-minded members of the Senate refusing to convict upon merely partisan grounds. So, too, in the case of Mr. Johnson, much of the more eminently legal and judicial talent of the majority which had been confidently depended upon for his condemnation refused to soil the ermine of the judge by any such base prostitution.

But we have said all that we desire upon this portion of Chief Justice Chase's judicial life. His conduct and talent, displayed in vindicating the character of the tribunal and his own position in regard to it, form unquestionably the most important and characteristic act of his judicial life, and did more, probably, than any other thing to secure the acquittal of the accused, and thus save as far as it could be done the credit both of the country and of the party instigating the prosecution. The accused before his death was returned a member of that same Senate and declared his determination to forgive and forget all past injuries at the hands of those who sought his overthrow. It is surely proper that others do the same. We would not have alluded to it but for the exceptional importance of the Chief Justice's connection with the trial and the essential bearing it will always be entitled to hold as evidence that Chief Justice Chase may justly be reckoned among the three great Chief Justices of the Supreme Court of the nation.

It is idle to suppose that Chief Justice Chase felt any special interest either in Mr. Johnson or his acquittal, except as it came from his general love of justice and his natural and just indignation at so barefaced an attempt to convert the highest judicial tribunal known to the Constitution and laws into a mere political and partisan instrument, while sitting to deprive

the highest executive officer of the nation, not only of his office, but virtually of his life and character at the same time, since it would deprive both of all value to an honorable man. The solemn farce maintained on the part of most of the managers of persistent refusal to address the Court of Impeachment during the trial in that language of courtesy due to the humblest municipal tribunal received fitting rebuke at the hands of Mr. Stevens of Pennsylvania, one of the managers, whose hatred of shams was only equalled by his love of decency, when he began his final argument in the case thus: "Mr. Chief Justice, may it please the court," — thus yielding everything upon this point which could fairly have been demanded, going even beyond the formal address of the counsel for the accused, who contented themselves with "Mr. Chief Justice and Senators," while the other managers persistently declined to address the court as such, or its head as Chief Justice.

We have thus made a brief, and we fear, somewhat imperfect record of the leading incidents in the public life and conduct as well as an estimate of the true character of one of the great and good men of the Republic. Few, if any, others have been called to the discharge of the duties of so many of the high places in office, both State and national, and no one, we believe, ever evinced the same degree of superiority and eminence in all the places of public trust to which he was called in such various and almost incompatible qualifications.

ISAAC F. REDFIELD.

ART. V. — 1. *Report to the Legislature of Massachusetts of the Commissioners appointed to inquire into the Expediency of revising and amending the Laws relating to Taxation and exemption therefrom.* Boston, January, 1875.

2. *Report of the Treasurer and Auditor of Virginia to the House of Delegates on the Subject of Taxation, together with the Draft of a Tax Bill.* Richmond, November, 1874.

3. *Report of the Joint Special Committee on the Subject of Property liable to and exempt from Taxation, made to the General Assembly of the State of Rhode Island.* January, 1875.